DOCUMENT RESUME

ED 136 918 PS 009 162

AUTHOR Leahy, Robert L.
TITLE The Child's Conception of Mens Rea: Information Mitigating Punishment Judgments.
SPONS AGENCY National Inst. of Mental Health (DHEW), Rockville, Md.
PUB DATE Mar 77
GRANT NIMH-G-MH-29863
NOTE 17p.; Paper presented at the biennial meeting of the Society for Research in Child Development (New Orleans, Louisiana, March 17-20, 1977)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Age Differences; *Aggression; Elementary Education; *Elementary School Students; *Moral Development; *Punishment; Research; Sex Differences; *Situational Tests; *Student Attitudes

ABSTRACT

Sixty-two white middle class subjects forming two age groups (6 and 11 years) were given information about hypothetical peers who were described as hitting the subject child. Children indicated how much they thought the peer should be punished (spanked). Older subjects put more emphasis on situational or personal information about the peer (including the presence of "Mens Rea," the guilty mind or the state of mind of the peer) than did younger subjects in deciding how severely a child should be punished. The order of mitigation of information for the older subjects (from most to least mitigating) was: provocation, duress, emotional maladjustment, lack of chronic occurrence, and lack of emotional maladjustment, with chronic transgressors punished more than all other transgressors. For 6-year-old children the only mitigating factor was provocation. External constraints were more mitigating than internal contraints. Male transgressors were punished more thar female transgressors. Male subjects found duress and lack of chronic occurrence of transgressions to be more mitigating than did female subjects. The findings were discussed in terms of Piaget's moral judgment theory and the development of causal schemes of attribution. (Author/JMB)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED136918

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

The Child's Conception of Mens Rea:

Information Mitigating Punishment Judgments

Robert L. Leahy

New School for Social Research

Running Head: Mitigating Punishment Judgments

This study was supported by NIMH Grant MH 29863 and by Boys Town. The contribution of Roger Locker is gratefully acknowledged. A version of this paper was presented at meetings of the Society for Research in Child Development, New Orleans, March, 1977. Requests for reprints should be sent to Robert L. Leahy, Graduate Faculty, New School for Social Research, 66 West 12th Street, New York, New York 10011.

PS 009162

Abstract

Sixty-two children forming two age groups (6 and 11 years) were given information about hypothetical peers who were described as hitting the child. Children indicated how much they thought the peer should be punished (spanked). Older subjects put more emphasis on situational or personal information about transgressions than did younger subjects in deciding how severely a child should be punished. The order of mitigation of information for the older subjects (from most to least mitigating) was: provocation, duress, emotional maladjustment, with chronic transgressors punished more than all other transgressors. External constraints were more mitigating than internal constraints. For six year old children, the only mitigating factor was provocation. Male transgressors were punished more than female transgressors and male subjects found duress and lack of chronicity of transgressions to be more mitigating than did female subjects. The findings were discussed in terms of Piaget's moral judgment theory and the development of causal schemes of attribution.

The Child's Conception of Mens Rea:

Information Mitigating Punishment Judgments

The purpose of the present investigation was to determine what kinds of information which theoretically imply intentional or free action are utilized by children of different ages in deciding on an appropriate punishment for a transgressor. A number of investigations have supported Piaget's (1952) claim that with increasing age, there is greater emphasis on the intentions of transgressors in moral judgments (Costanzo, Coie, Grumet & Farnill, 1973; Shantz & Voydanoff, 1973; Weiner & Peter, 1973). In the usual Piagetian study intention is implied by foresight of the consequences of action. In the present study, information was presented to children pertaining to the constraints on the transgressor.

Two theoretical positions--attribution theory and contemporary theory of jurisprudence--may provide a general theoretical framework for the consideration of what information is used in the evaluation of transgressors. In their attribution analysis of personalism, Jones and Davis (1965) suggest that persons consider situational factors (e.g., provocation) and dispositional factors (e.g., mental illness or chronicity of transgression) in evaluating hostility. Persons who are provoked, or who are mentally ill, or chronically hostile are evaluated less negatively than persons without these characteristics. Several studies provide support for this analysis of personalism (Deutsch & Solomon, 1959; Hewitt, 1975; Rule & Duker, 1973; Shantz & Voydanoff, 1973).

Evaluations of transgressors are assumedly based on the inference of intention or free action. Kelley (1972; 1973) has suggested that inferences about the causes of behavior are made on the basis of causal schemes. According to one of these causal schemes--the multiple sufficient causal

PS 009162

scheme for faciliatory causes--the presence of one faciliatory cause leads to the discounting or minimization of other faciliatory causes. Inferences of intention may be made on the basis of similar causal schemes with presence of one faciliatory cause (e.g., provocation) leading to the discounting of the presence of intention. Children younger than nine do not use multiple sufficient cause schemes in their attributions about persons (Smith, 1975; Shultz, Butkowsky, Pearce & Shanfeld, 1975), suggesting that information relating to situational or dispositional factors of transgressors would not affect inferences of intention or culpability. Thus both Piagetian theory of moral judgment and developmental research on attribution processes suggest that young children (i.e., six years old) would not use information related to the inference of intention, while older children would use this information.

According to contemporary theory of jurisprudence in the criminal law, jurists consider situational and personal factors of transgressions in deciding on an appropriate punishment for defendents (Hart, 1968). In order to consider the presence of "Mens Rea" (the guilty mind or the state of mind) of defendents, jurists consider information pertaining to the intention of the defendent, with intentional actions leading to more severe punishment than unintentional actions. The dimensions of Mens Rea commonly used are provocation, duress, emotional maladjustment, and foresight of consequences. Intentionality is such a fundamental criterion of responsibility in the law that the mere intention to commit a crime (such as conspiracy), evidenced by action and speech, is often sufficient grounds for conviction even if the criminal action is not completed. These dimensions of Mens Rea parallel to some extent Jones and Davis's criteria of personalism. However, Holmes (1895/1959) suggested that jurists are confronted with

evidentiary problems in evaluating defendents and that there is a preference to consider external constraints (such as provocation or duress) rather than attempt to prove state of mind. In fact, this problem of proof may be the reason why "mental illness" is a recent and still problematic grounds for defense (Goldstein, 1968). Consequently, a second purpose of this study was to determine if certain kinds of information related to Mens Rea were more mitigating of punishment than other information.

Finally, Jones and Davis's proposal that chronicity of transgression implies less personalism and less negative evaluation does not appear to reflect the common tradition in the law of punishing repeated offenders more than a first or occasional offender. Indeed, from a somewhat different attribution theory (Kelley, 1967) dispositional inferences would be greater given the consistency of a transgressor's hostility. If punishment judgments are based on inferences of intention (Hart, 1968) and if dispositions necessarily imply inferences of the person's intentions (Jones & Davis, 1965), then we would expect that chronic transgressors would be punished more than transgressors who do not chronically transgress.

Method

Subjects

Subjects were sixty-two children forming two age groups (6 years and 11 years of age), with thirty-one children in each age group. Approximately half of each group was male, half female. Almost all the subjects were white middle-class children. All the children came from private schools located in the suburb of a large city.

Stimulus Materials and Measure

All subjects responded to sixteen "cues" each of which consisted of a short description of a hypothetical peer who was identified by first

name (e.g., Mary or Tom). For each cue, the peer was described as having hit the child. Seven information dimensions were defined by the presence of situational or personality information about the transgressing peer or by the absence of any information about the peer except for mention of the transgression. For (1) provocation the information was, "Let's pretend that you have lost Tom's (Carol's) ball which he (she) liked very much." (2) Duress was identified by, "Mike (Ann) is told by a bully to hit you. The bully tells Mike (Ann) that if Mike (Ann) doesn't hit you. the bully will hit Mike (Ann)." (3) Emotional maladjustment was described as "Some people say that Roger (Jane) is a little crazy." or "Frank (Betty) says that he (she) hears voices when nobody is around. He (she) doesn't play with the other kids." (4) Chronicity was described by "Bob (Susan) is always getting into fights with other kids at school." (5) The lack of maladjustment was identified by "People say that Larry (Sandra) is just like all the other kids" and (6) lack of chronicity of hostility was "Carl (Greta) gets along with the kids at school." (7) The lack of any situational or personality information was described by "Andy (Judy) is in the hallway in school and sees you." For each cue, the transgressor was described as hitting the child. There were two cues for each of the information dimensions and four cues for no information. Approximately half of each age group was presented with cues about male transgressors while half was presented with female transgressors. The sixteen cues were arranged in random order.

The dependent measure was the child's choice of an appropriately severe punishment for the transgressor as indicated by pointing to either a white circle on a black background with diameter of 8.2cm for no punishment, or one of five black squares on a white background arranged in increasing size

(3.8cm, 5.3cm, 8.0cm, 10.2cm, and 12.1cm, respectively for various degrees of punishment). The larger the square, the more severe the punishment advocated by the child. In all cases, the punishment was to be spanking.

Procedure

Subjects were tested individually by an experimenter who read the following instructions to the child:

"I'm going to read you some short descriptions of a boy (girl) your age. These are make-believe boys (girls). I'm going to tell you something about each make-believe boy (girl). And then I want you to pretend that this boy (girl) hit you. I will ask you about each boy (girl)--'How much he (she) should be punished?' --'How much do you think he (she) should be spanked if he (she) hit you?' To help you tell me how much he (she) should be spanked I have a white circle and five black squares. Now if you think the boy (girl) should not be spanked, then point to the circle. If you think the boy (girl) should be spanked a little bit, point to the small square here.

"If you think he (she) should be spanked a lot, then point to a big square. These squares in the middle are for the times you think he (she) should be spanked a medium amount--somewhere in between spanked a little and spanked a lot. You see the bigger the square, the more he (she) should be spanked. Don't forget if you think he (she) should not be spanked at all, point to the circle. OK. Now tell me, what if you thought he (she) should be spanked a little? Which square would you point to?

"What if you thought he (she) should be spanked a medium amount?

"And what if he (she) should be spanked a lot? Which square

would you point to?

"I'm going to read you some short descriptions of a make-believe boy (girl) your age and I want you to tell me if you think he (she) should be spanked. And if he (she) should be spanked, how much?"

If the child did not correctly identify the appropriate punishments during the training procedure he was corrected and trained until his response was correct. Each cue was read to the child and after each cue, the child was asked if the boy (girl) should be spanked and if so, how much. The entire testing procedure lasted for fifteen minutes.

Results

A 2x2x2x7 unweighted means analysis of variance (Age x Sex x Sex of Cue x Information Dimension) was performed with repeated measures for Information Dimension. The dependent measure in this analysis was the mean punishment judgment for each story for the different information dimensions. This analysis indicated main effects for Sex of Cue, $F(1, 54) = 4.60$, $p<.05$ and Information Dimensions, $F(6,324) = 27.96$, $p<.001$. As Table 1 indicates, male transgressors were punished more severely than female transgressors. Separate comparisons for younger and older subjects indicated that both six year old children, $t(324)$, $p<.05$, and eleven year old children, $t(324)$, $p<.05$, were less severe in punishing females than in punishing

---

Insert Table 1 about here

---

males.

There was a significant Age x Information Dimension interaction, $F(6, 324) = 8.26$, $p<.001$. Separate comparisons for the eleven year old subjects for information dimensions indicated the following order of

mitigation (from most to least mitigating): Provocation ($p < .06$)[1], Duress ($p < .05$), Maladjustment ($p < .001$), and No Information. For the older subjects, maladjusted transgressors were punished less than non-maladjusted transgressors ($p < .025$) and transgressors who were not chronic were punished less than chronic transgressors ($p < .001$). There was no significant difference between chronic transgressors and transgressors about whom no information was given. For the younger subjects, the only mitigating factor was provocation ($p < .005$ for No Information vs. Provocation). The mean punishment judgment scores for both age groups for the seven information dimensions are shown in Table 2.

Insert Table 2 about here

There was a significant Sex x Information interaction, $F(6, 324) = 3.43$, $p < .003$. Males tended to find duress more mitigating than females did ($\bar{X} = 1.31$ and 2.27 for males and females) and males also found lack of chronicity more mitigating than females did ($\bar{X} = 1.94$ and 2.69 for the respective groups). None of the other main effects or interactions reached significance.

Discussion

The finding that older children put more emphasis on personal and situational information about transgressors in their punishment judgments supports and extends Piaget's (1934) theory of moral judgment. Several of the information dimensions of the present study were directly related to the inference of intention or free action. Most Piagetian tests of moral judgments have used expressed purpose (e.g., the child "wanted to get the cups") as the indication of intention. In the present study, information such as provocation or duress could be used to discount intention, since these fac-

tors could be perceived as sufficient causes for actions, constraining the transgressor to act in a particular way.

Inference of intentions can be made on the basis of a multiple sufficient causal scheme such that the presence of one faciliatory cause is sufficient for causal attribution. Thus, provocation, duress, or maladjustment can be construed as sufficient causes to explain the transgressor's behavior and it is, therefore, unnecessary to infer the presence of intention. According to this scheme of inference, the faciliatory cause constrains the person's actions, such that the person is perceived as not free to act in other ways. In the absence of a sufficient cause, the inference of intention is made and blameworthiness is implied. The use of the multiple sufficient causal scheme appears to show a developmental trend with preoperational children not using such causal schemes (Shultz, et al, 1975; Smith, 1975). The findings of the present study suggest that these causal schemes may be essential in the inference of intention given situational or personal information about transgressors.

The most mitigating information was provocation. An important factor involved in provocation is that the victim (i.e., the provoker) may be seen as an appropriate target of the transgressor's agression since the victim has caused harm. This is not the case in duress, where the victim is simply the unfortunate target of someone's malice. A second factor involved in provocation is that the person perceiver need only understand the interactions of a dyad, while in duress, the perceiver must comprehend the complexities of a triad.

In both provocation and duress, the transgressor's freedom of action is constrained by causes beyond his control. Consequently, one is inclined

to discount the presence of intention. An important consequence of discounting intention is that prediction of future transgressions cannot easily be made since the necessary element in dispositional inferences (i.e., intention) is not assumed (Jones & Davis, 1965). This would appear to be an essential consideration whether our conception of punishment were expiative or deterrent, since in expiative punishment, we would want to punish transgressors for being "that kind of person", while in deterrence, we would want to warn others against such behavior. However, if provocation and duress are seen as sufficient causes of aggression in most persons, then it would appear to be foolish to warn others of the potential that indeed they are like everyone else--that is, that they would respond aggressively given provocation or duress. We would appear to be wise to save our warnings for persons disposed toward aggression without sufficient justification. This "distributive" theory of justice (Rawls, 1971) differs from moral realism in that in distributive justice, consideration of individual differences is essential.

Emotional maladjustment proved to be a mitigating factor in the punishment judgments of older children. If inferences of intention are based upon the perception of free action (that is, unconstrained action) then maladjustment can be seen as a factor in discounting intention. Heider (1958) suggests that an important factor in inferring intention is that the actor can act in particular ways: in the case of maladjustment, the actor's behavior is limited by the maladjusting disposition. However, emotional maladjustment was less mitigating than provocation and duress. Unlike these latter dimensions, emotional maladjustment is an internal constraint --one which is less perceptibly salient than provocation or duress. It is not difficult to see or imagine what provocation or duress are--someone

causes harm or threatens someone else; the perception of maladjustment is a more difficult task. Indeed, Heider's (1958) suggestion that "behavior engulfs the field" might be extended to "external constraints engulf the field." The greater salience of external causes is reflected in Bem's (1967) theory of attribution in that preference is given to external causes (mands) in discounting internal causes. Indeed, the difficulty in ascertaining the importance of emotional maladjustment in criminal responsibility has made this an historically recent and problematic grounds for defense (Goldstein, 1968).

Chronic transgressors were punished more than transgressors who were described as not transgressing in the past. Chronic transgression, of course, implies the presence of a disposition which, in turn, implies the presence of intentions. "First offenders" might be given the benefit of the doubt that there might have been extenuating (constraining) circumstances suggesting that they would not necessarily be inclined to transgress in the future.

The fact that males found duress more mitigating than females did might suggest that males are more likely to be threatened by their peers and thereby come to understand the meaning of duress in the transgressor's actions. Moreover, it may also suggest that males are more inclined than females to emphasize external constraints rather than internal constraints. In any case, this finding and the sex difference in considering lack of chronicity merit further investigation.

Male transgressors were punished more than female transgressors, suggesting that at an early age, both males and females share a stereotype of advocating more severe physical punishment for males. Whether this is because children see males being physically punished more or because there

is more sympathy for or tolerance of female transgressions is unclear from the present study.

Several of the factors mitigating punishment judgments could be construed as "excuses" in everyday interactions. Drawing upon the data and speculations of the present study, future work might consider the mitigating effect of everyday "excuses". Utilizing an attribution analysis, these excuses could either be internal ("I didn't mean that.") or external ("I'm only like this when I'm with you.") Further, excuses can fall along the dimensions of Kelley's (1967) analysis of variance model of attribution indicating to the "judge" the consistency, distinctiveness, or consensus of the transgressor's behavior. This attribution approach to inferences of intention or assignment of blame could provide a heuristic means of extending the Piagetian approach to the development of the conception of subjective responsibility in everyday interaction.

References

Bem, D. J. Self-perception: An alternative interpretation of cognitive dissonance phenomena. Psychological Review, 1967, 74, 183-200.

Costanzo, P., Cole, J. Grumet, J. and Farnill, D. A re-examination of the effects of intent and consequence on children's moral judgments. Child Development, 1973, 44, 154-161.

Deutsch, M. and Soloman, L. Reactions to evaluations by others as influenced by self-evaluation. Sociometry, 1959, 22, 93-112.

Goldstein, A. The Insanity Defense. New Haven: Yale University Press, 1968.

Hart, H. L. A. Punishment and Responsibility: Essays in the Philosophy of Law. New York: Oxford University Press, 1968.

Heider, F. The Psychology of Interpersonal Relations. New York: Wiley, 1958.

Hewitt, L. Effects of provocation, intentions, and consequences in children's moral judgments. Child Development, 1975, 46, 540-44.

Holmes, O. W. The Common Law. Cambridge, Mass: Belknap Press, 1969.

Jones, E. and Davis, K. From acts to dispositions. In L. Berkowitz (Ed.) Advances in Experimental Social Psychology, Vol. 2, New York: Academic, 1967.

Kelley, H. H. Attribution theory in social psychology. In D. Levine (Ed.) Nebraska Symposium on Motivation. Lincoln: University of Nebraska, 1967.

Kelley, H. H. Causal schemata and the attribution process. Morristown, New Jersey: General Learning Press, 1972.

Kelley, H. H. The process of causal attribution. American Psychologist, 1973, 28, 107-128.

Piaget, J. The Moral Judgment of the Child. New York: Harcourt-Brace, 1932.

Rawls, J. A Theory of Justice. Cambridge: Harvard University Press, 1971.

Rule, B. and Duker, P. Effect of intentions and consequences on children's evaluations of agressors. Journal of Personality and Social Psychology, 1973, 27, 184-189.

Shantz, D. Voydanoff, D. Situational effects on retaliatory aggression at three age levels. Child Development, 1973, 44, 149-153.

Shultz, T., Butkowsky, I., Pearce, J., and Shanfeld, H. Development of schemes for the attribution of multiple psychological causes. Developmental Psychology, 1975, 11, 502-510.

Smith, M. C. Children's use of the multiple sufficient cause scheme in social perception. Journal of Personality and Social Psychology, 1975, 32, 737-747.

Weiner, B. and Peter, N. A cognitive-developmental analysis of achievement and moral judgments. Developmental Psychology, 1973, 9, 290-309.

Footnotes

1. T-test comparisons are two-tailed comparisons of each information dimension with the next less mitigating dimension (e.g., provocation vs. duress).

Table 1

Punishment Judgments as a Function

of Sex of Transgressor

	Transgressor	
Age	Male	Female
6	2.82	2.22
11	2.34	1.80

Table 2

Punishment Judgments as a Function

of Information about Transgressors and Age Information

Age	None	Prov	Duress	Mal	Not Mal	Chrn	Not Chrn
6	2.72	1.92	2.42	2.48	2.66	2.98	2.55
11	3.18	0.70	1.15	1.70	2.28	3.46	2.08
Total	2.95	1.31	1.78	2.09	2.47	3.22	2.32